

Appl. No. 09/927,125  
Resp. dated Sep. 29, 2005  
In Reply to Office Action of Apr. 29, 2005

### REMARKS

Claims 1-22 are pending in the present application. Claims 1-5 and 22 are objected to. Claims 1-22 stand rejected.

#### I. ALLOWABLE SUBJECT MATTER

Applicants gratefully acknowledge the indication by the Examiner that claims 3, 7-9, 12, 14 and 15 contain patent subject matter. In view of the remarks herein, it is believed that claims 3, 7-9, 12, 14 and 15 are in condition for allowance.

#### II. CLAIM OBJECTIONS

Claims 1-5 are objected to due to informalities noted by the Examiner. Applicants have amended claims 1, 4 and 5. Claim 3 does not recite "a first wireless device" as alleged in the Office Action, and thus the objection cannot be addressed.

Claims 20 and 22 are identical. Claim 22 has been amended to depend from claim 21.

It is respectfully requested that the objections be withdrawn with respect to claims 1-5, 20 and 22.

#### III. REJECTION UNDER 35 U.S.C. § 112

Claim 17 stands rejected under 35 U.S.C. § 112, ¶ 1, as reciting subject matter not supported by the specification. Applicants respectfully submit that claim 17, as originally filed, provides support in the written description since the written description includes the claims as originally filed. With regard to enablement, one of ordinary skill in the art can understand and implement "a content provider in communication with the access point". Applicants have amended the specification without adding new matter. It is therefore respectfully requested that the rejection under 35 U.S.C. § 112, ¶ 1, be withdrawn with respect to claim 17.

Claims 1-5 and 10-12 stand rejected under 35 U.S.C. § 112, ¶ 2, as being indefinite because particular recited elements have not antecedent basis. Applicants have amended claims 1 and 10. It is believed that the other recited elements in the other claims now have an antecedent basis. It is therefore respectfully requested that the rejection under 35 U.S.C. § 112, ¶ 2, be withdrawn with respect to claims 1-5 and 10-12.

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#### **IV. ANTICIPATION REJECTION OF CLAIMS 1, 10, 19, 20 AND 22**

Claims 1, 10, 19, 20 and 22 stand rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,078,959 ("Wright"). Applicants respectfully traverse the rejection as set forth below.

##### **Claim 1**

Claim 1 recites, in part, a first wireless device. The Office Action at pages 4 and 5 alleges that the first wireless device is a base station. For example, claim 1 recites, in part, recording the upload activity by the first wireless device. The Office Action states that recording is queuing at the server system which is the base station according to Wright at col. 6, line 1 ("a server system, i.e., base station").

If the first wireless device as set forth in claim 1 is alleged to be a base station as described in Wright for some of the recited elements, then the first wireless device must be the base station as described in Wright for all of the recited elements.

If the base station in Wright is the first wireless device as set forth in claim 1, then the base station must satisfy "polling the first wireless device according to the established first polling rate". Applicants respectfully submit that Wright does not fairly describe polling the base station. In fact, it is the base station that transmits a poll message to the subscribers. See, e.g., Wright at col. 6, lines 9-13.

Applicants respectfully submit that an anticipation rejection of claim 1 based on the base station as described in Wright cannot be consistently and logically maintained. Since Wright does not describe a first wireless device as set forth in claim 1, Wright cannot anticipate claim 1.

It is therefore respectfully requested that the anticipation rejection under 35 U.S.C. § 102(e) based on Wright be withdrawn with respect to claim 1.

##### **Claim 10**

Claim 10 recites, in part, a plurality of instructions configured to cause a processor to poll a first wireless device according to a first polling rate and to record upload activity by the first wireless device in response to the polling". The Office Action at pages 4 and 5 alleges that the first wireless device is a base station as described in Wright. For the reasons similar to those

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stated above with respect to claim 1, a base station as described in Wright cannot consistently satisfy at least these elements as set forth in claim 10.

It is therefore respectfully requested that the anticipation rejection under 35 U.S.C. § 102(e) based on Wright be withdrawn with respect to claim 10.

Claims 19 and 20

Claim 19 is alleged to be anticipated by Wright at the Abstract and col. 16, lines 35-55 (i.e., claim 1 as set forth in Wright). Applicants respectfully submit that Wright does not describe each and every element as set forth in claim 19. For example, claim 19 recites "receiving a first polling signal from an access point" and "receiving a second polling signal from the access point". The Abstract and the col. 16, lines 35-55 of Wright do refer to messages sent by a base station, however, these are not polling signals.

In the Abstract of Wright, the first message is an acknowledge message such as acknowledge message 1040 in time slot 1041 in FIG. 10 of Wright; the second message is a resource acknowledge message such as resource acknowledge message 1042 in time slot 1043 in FIG. 10 of Wright.

Col. 16, lines 35-55 of Wright refer to a first message, a second message and a third message, but these messages do not correspond to a first polling signal and a second polling signal as set forth in claim 19. In col. 16, lines 35-55 of Wright, the first message is a poll message such as poll message 1003 in time slot 1004 in FIG. 10 of Wright; the second message is an acknowledge message such as acknowledge message 1040 in time slot 1041 in FIG. 10 of Wright; and the third message is a resource acknowledge message such as resource acknowledge message 1042 in time slot 1043 in FIG. 10 of Wright.

Furthermore, claim 19 also recites, in part, that the second polling signal corresponds to the first amount of data uploaded. Applicants respectfully draw the attention of the Examiner to the fact that the second polling signal corresponds to an amount. It is respectfully submitted that Wright does not describe such a correspondence.

It is therefore respectfully requested that the anticipation rejection under 35 U.S.C. § 102(e) based on Wright be withdrawn with respect to claim 19 and its rejected dependent claim (i.e., claim 20).

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Claim 22

Claim 22 has been amended to depend from claim 21 and not claim 19. However, claim 22 also recites, for example, a first polling signal and a second polling signal. Accordingly, the same or similar arguments that were made with respect to claims 19 and 20 are made, if appropriate, with respect to claim 22.

It is therefore respectfully requested that the anticipation rejection under 35 U.S.C. § 102(e) based on Wright be withdrawn with respect to claim 22.

**V. ANTICIPATION REJECTION OF CLAIMS 16-18**

Claims 16-18 stand rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,865,165 attributed to Quayle. The Office Action at page 6, section 8, attributes United States Patent No. 6,865,165 to Quayle.

Applicants respectfully note that United States Patent No. 6,865,165 B1 does not list Quayle as an inventor. Instead, United States Patent No. 6,865,165 lists Kari Huttunen as the sole inventor on the face of the patent. The Notice of References Cited (i.e., PTO Form 892 attached to the Office Action) lists Kari Huttunen as the sole inventor of United States Patent No. 6,865,165. Accordingly, Applicants respectfully note that United States Patent No. 6,865,165 should be attributable to Huttunen.

However, the Office Action at page 6, section 8, when discussing United States Patent No. 6,865,165 refers to "fig. 14 and col. 12 line 63 through col. 13 line 20". United States Patent No. 6,865,165 only has three (3) figures and does not have a Figure 14. United States Patent No. 6,865,165 only has ten (10) columns and does not have columns 12 and 13 as set forth in the Office Action at page 6, section 8.

Furthermore, none of the patents listed in the Notice of References Cited attached to the Office Action lists Quayle as an inventor. Applicants have checked each of the patents listed in the Notice of References Cited and cannot find an inventor named Quayle.

Applicants respectfully submit that the anticipation rejection should not be maintained without documentary support.

It is therefore respectfully requested that the anticipation rejection under 35 U.S.C. § 102(e) be withdrawn with respect to claims 16-18.

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**VI. OBVIOUSNESS REJECTION OF CLAIMS 2 AND 11**

Claims 2 and 11 stand rejected under 35 U.S.C. § 103(a) as being obvious over Wright in view of United States Patent No. 6,097,707 ("Hodzic"). Applicants respectfully traverse the rejection as set forth below.

Applicants respectfully submit that the above-described teaching deficiencies of Wright are not made up by the teachings of Hodzic. It is therefore respectfully submitted that a *prima facie* case of obviousness has not been presented.

It is therefore respectfully requested that the obviousness rejection under 35 U.S.C. § 103(a) based on Wright in view of Hodzic be withdrawn with respect to claims 2 and 11.

**VII. OBVIOUSNESS REJECTION OF CLAIM 4**

Claim 4 stands rejected under 35 U.S.C. § 103(a) as being obvious over Wright in view of United States Patent No. 6,370,381 ("Minnick"). Applicants respectfully traverse the rejection as set forth below.

Applicants respectfully submit that the above-described teaching deficiencies of Wright are not made up by the teachings of Minnick. It is therefore respectfully submitted that a *prima facie* case of obviousness has not been presented.

It is therefore respectfully requested that the obviousness rejection under 35 U.S.C. § 103(a) based on Wright in view of Minnick be withdrawn with respect to claim 4.

**VIII. OBVIOUSNESS REJECTION OF CLAIMS 5 AND 21**

Claims 5 and 21 stand rejected under 35 U.S.C. § 103(a) as being obvious over Wright in view of United States Patent No. 6,490,256 ("Jones"). Applicants respectfully traverse the rejection as set forth below.

Applicants respectfully submit that the above-described teaching deficiencies of Wright are not made up by the teachings of Jones. It is therefore respectfully submitted that a *prima facie* case of obviousness has not been presented.

It is therefore respectfully requested that the obviousness rejection under 35 U.S.C. § 103(a) based on Wright in view of Jones be withdrawn with respect to claims 5 and 21.

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**IX. OBVIOUSNESS REJECTION OF CLAIMS 6 AND 13**

Claims 6 and 13 stand rejected under 35 U.S.C. § 103(a) as being obvious over Quayle in view of United States Patent No. 5,613,211 ("Matsuno"). Applicants respectfully traverse the rejection as set forth below.

As discussed above in Section V with regard to Quayle, since United States Patent No. 6,865,165 does not support the arguments in the Office Action and since Quayle cannot be attributed to any of the patents listed in the Office Action or the attached Notice of References Cited, a prior art rejection should not be maintained in which no document has been provided in support.

Applicants respectfully submit that a *prima facie* case of obviousness has not been presented in which the Examiner has the initial burden of going forward. It is therefore respectfully requested that the obviousness rejection under 35 U.S.C. § 103(a) be withdrawn with respect to claims 6 and 13.

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**X. CONCLUSION**

In view of at least the foregoing, it is respectfully submitted that the pending claims 1-22 are in condition for allowance. Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the below-listed telephone number.

The Commissioner is hereby authorized to charge additional fees or credit overpayments to the deposit account of McAndrews, Held & Malloy, Account No. 13-0017.

Dated: September 29, 2005

Respectfully submitted,

  
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